

Date of Hearing: April 17, 2008

ASSEMBLY COMMITTEE ON JUDICIARY  
Dave Jones, Chair  
AB 3050 (Judiciary) – As Introduced: February 28, 2008

SUBJECT: ACCESS TO JUSTICE

KEY ISSUE: SHOULD THE COMMITTEE CONTINUE TO PROMOTE EQUAL ACCESS TO JUSTICE BY IMPLEMENTING RECOMMENDATIONS OF THE NON-PARTISAN COMMISSION ON ACCESS TO JUSTICE TO PREVENT FRAUD, PROMOTE VOLUNTARY PRO BONO BY LAWYERS AND ESTABLISH A LIMITED AND SELF-SUPPORTED PILOT PROGRAM TO PROVIDE COURT INTERPRETERS FOR THOSE WHO NEED ASSISTANCE WITH ENGLISH?

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

**SYNOPSIS**

*This non-controversial measure reflects the Committee's continued efforts to promote equal access to justice by implementing recommendations of the non-partisan California Commission on Access to Justice to prevent fraudulent misuse of the term "legal aid," promote voluntary pro bono by lawyers and establish a limited and self-supported pilot program to provide court interpreters for those who need assistance with English. It is supported by a wide cross-section of stakeholders involved in the provision of legal services. There is no known opposition.*

SUMMARY: Implements recommendations of the California Commission on Access to Justice. Specifically, this bill:

- 1) Combats fraudulent and deceptive misuse of the term "legal aid" unless the entity is a bona fide nonprofit organization that provides civil legal services for the poor without charge by prohibiting such conduct and providing a mechanism by which injured consumers and legal aid organizations may obtain relief.
- 2) Establishes a model pilot program to be developed by the Judicial Council for providing court interpreters in important civil matters not currently served.
- 3) States the intent of the Legislature to encourage the provision of pro bono legal services and financial support of nonprofit legal organizations that provide free legal services to underserved communities.

EXISTING LAW:

- 1) Requires that every written proceeding in a court of justice in this state shall be in the English language, and judicial proceedings shall be conducted, preserved, and published in no other. (Code of Civil Procedure section 185.)
- 2) Provides that a person unable to understand English who is charged with a crime has a right to an interpreter throughout the proceedings. (Cal. Const., Art. I, section 14.)

- 3) Requires appointment of a qualified interpreter in all civil proceedings where a party or witness is an individual who is deaf or hearing impaired. (Evidence Code section 754.)
- 4) Provides for the appointment of an interpreter in certain cases involving domestic violence, parental rights, and dissolution of marriage involving a protective order, subject to the availability of federal funding. (Evidence Code section 755.)
- 5) Requires appointment of an interpreter whenever a witness is incapable of understanding the English language or is incapable of expressing himself or herself in the English language so as to be understood directly by counsel, court and jury. (Evidence Code section 752.)
- 6) Requires appointment of a translator whenever the written characters in a writing offered in evidence are incapable of being deciphered or understood directly. (Evidence Code section 753.)
- 7) Provides pursuant to federal law that no person shall on the ground of race, color, or national origin be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving federal financial assistance, including conduct that has a disproportionate effect on persons of limited English proficiency. (42 U.S.C. section 2000(d).) State law is to the same effect. (Government Code section 11135.)
- 8) Provides that it has been the tradition of those learned in the law and licensed to practice law in this state to provide voluntary pro bono legal services to those who cannot afford the help of a lawyer; that every lawyer authorized and privileged to practice law in California is expected to make a contribution; that in some circumstances, it may not be feasible for a lawyer to directly provide pro bono services; and that in those circumstances, a lawyer may instead fulfill his or her individual pro bono ethical commitment, in part, by providing financial support to organizations providing free legal services to persons of limited means. (Business and Professions Code Section 6073.)
- 9) Provides that a contract with the state for legal services that exceeds fifty thousand dollars (\$50,000) shall include a certification by the contracting law firm that the firm agrees to make a good faith effort to provide, during the duration of the contract, a minimum number of hours of pro bono legal services during each year of the contract and that failure to make a good faith effort may be cause for nonrenewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the state for legal services, and that in awarding a contract with the state for legal services that exceeds fifty thousand dollars (\$50,000), the awarding department shall consider the efforts of a potential contracting law firm to provide, during the 12-month period prior to award of the contract, the minimum number of hours of pro bono legal services. (Business and Professions Code Section 6072.)

COMMENTS: The author states that this bill implements key recommendations of the non-partisan California Commission on Access to Justice to promote equal access to legal and judicial services for low-income Californians, as outlined in the commission's report last year, "Action Plan For Justice."

Legal Aid Fraud. First, the bill outlaws legal aid fraud. As the Commission's report explains:

When people are sued or need legal advice, they are commonly directed to “legal aid” agencies in court forms and by court staff, by information and referral lines, or by word of mouth. Indigent people sued for eviction, divorce, debt collection, or car repossessions, believe that by contacting “legal aid” they are reaching out to the proper agency that will assist them for no or low fees. Unfortunately, because the term “legal aid” is not regulated, anyone can use it as part of their business name. The result is that unscrupulous people create companies named “legal aid” and take advantage of the widely held belief that “legal aid” is the place that low-income people in legal need should turn to. Other vulnerable groups such as immigrants are similarly exploited, both because they are often unfamiliar with the American legal system and because they are unlikely to approach law enforcement agencies to report abuses.

These companies defraud our state’s most vulnerable populations at a very precarious time in their lives. They take large deposits and fail to file responsive pleadings essential to protect critical rights; they overcharge for services; and they charge for services that could be obtained at no cost. The harm caused by these fraudulent practices has consequences far beyond the harm they directly inflict on the consumers who employ their services. By presenting themselves as “legal aid” and then not fulfilling their promise and overcharging clients, these businesses cause the public to distrust legal aid agencies generally, not realizing that these for-profit businesses are not true legal aid organizations. This distrust can have far reaching effects if the poor do not seek the assistance of legal aid under the belief that it will cost them money they do not have and will not adequately assist them with their legal problems. Currently, there is no way to control directory assistance referrals to these “legal aid” listings, and even successful lawsuits against these businesses only result in temporary abatement, as they simply change the name and location of their operations to continue these fraudulent practices.

Court Interpreter Model Pilot Program For Critical Cases, Self-Supported By Court Fees To Address Governor's Fiscal Concerns. Secondly, the bill establishes a model pilot program to be developed by the Judicial Council for providing court interpreters in important civil matters not currently served. The commission's recommendation on this point explains:

Civil litigants who are unable because of language proficiency to fully understand and participate in the proceedings should have the right to a qualified interpreter at all stages of the proceedings irrespective of financial means. The implementation of this recommendation would likely be incremental and funding for all civil interpreter needs throughout the state will only become available over time. However, it is critical that access to court certified interpreters be recognized as a universal right in our judicial system. An immediate step toward this goal at a time when resources are limited is to establish pilot projects for court interpreters in civil cases involving significant legal rights. Pilot projects will allow a selected sample of courts to assess the need for interpreters in civil cases, examine ways of maximizing the use of existing interpreters through calendar management, and determine what it would take in terms of both funding and interpreters to provide adequate interpretation services. This approach will help ensure that funds are expended and available interpreters used in the most efficient and effective manner to achieve the goal of providing qualified interpreters to meet the need.

As with last year's substantively identical measure, the author states, "Nearly seven million Californians cannot access the courts without significant language assistance, cannot understand pleadings, forms or other legal documents, cannot communicate with judges, clerks or other court staff, and cannot understand or participate meaningfully in court proceedings – much less effectively present their cases – without a qualified interpreter. People with limited English proficiency are also often members of groups whose cultural traits or economic circumstances make them more likely to be subjected to legal problems, in part because perpetrators recognize their victims' limited ability to access judicial protection. For Californians who are not proficient in English, the prospect of navigating the legal system is daunting, especially for the growing number of parties in family court and other cases who do not have access to legal services and therefore have no choice but to represent themselves in court – a virtually impossible task for people who are unable to understand the proceedings."

As the California Commission on Access to Justice has observed, a lack of representation detracts from public confidence in the justice system when the financial situation of a party is more likely than the merits of an issue to determine the outcome. Respect for the law depends upon public confidence in the accessibility of the justice system. Whether disputes are brought to the legal system for resolution or decided in less desirable ways depends in part on whether the courts are available to all who face legal problems. Court opinion surveys show that public trust and confidence are negatively affected by impressions of procedural unfairness, and that the opportunity for people to be heard in a meaningful way is the biggest impediment to improved sense of procedural fairness. Disturbingly, opinion surveys show that more than two-thirds of Californians believe low-income people usually receive worse outcomes in court than others. In addition, parties that appear in court without the assistance of counsel believe they are at a disadvantage and that they would have been treated better (procedural fairness) and had a better outcome (substantive fairness) if they were represented by a lawyer. Respect for a system of laws is not encouraged if most people perceive, rightly or wrongly, that justice is only for the wealthy.

The author notes that the Governor vetoed AB 2302 of 2005, a substantively identical measure, stating, "[i]t is essential to provide non-English speaking litigants with interpreters in order to provide meaningful access to our justice system ... [h]owever, now is not the time to expand programs that significantly increase the expenditure of General Fund dollars at a time the State is moving to eliminate its structural deficit." In light of the Governor's recognition that interpreters are essential, and in order to address the Governor's fiscal concerns, this bill is self-supported by a small (\$10) fee increase so as to have no General Fund impact.

Promotion of Pro Bono. Finally, the Access Commission recommended measures to promote pro bono by lawyers, noting:

Every year, tens of thousands of California lawyers provide pro bono legal services in conjunction with over 100 California legal services programs or other public interest groups. .... They provide business law assistance to non-profit organizations and micro-entrepreneurs. They staff clinics at senior centers, family resource centers and homeless shelters where they offer brief advice, counsel and information. They assist in community education and outreach programs designed to inform and enable low and moderate income individuals to resolve their own legal issues. While organized pro bono efforts have existed for many years, during the past 25 years in particular the legal profession has sought to significantly expand institutionalized pro bono rather than rely

on the isolated acts of charitably minded lawyers. Pro bono programs now mobilize large numbers of pro bono attorneys whose efforts, along with those of legal services attorney staff, help provide a continuum of legal services to California's low-income population, from legal representation, impact litigation and business law assistance to non-profit organizations and micro-entrepreneurs, to community education and outreach, and policy advocacy. ... While the efforts of volunteer lawyers, paralegals and law students will never fill all of the unmet legal needs facing low and moderate income Californians, they are a crucial element in the network of attorney-staffed legal services programs. However, there remains significant capacity for the legal community to provide more pro bono legal services. Therefore, it is important that pro bono and legal services programs have the resources to successfully recruit, train, mobilize and mentor California pro bono lawyers.

Among other recommendations, the commission singled out for special attention the value of adopting ABA Model Rule 6.5, which allows attorneys working in legal services and court-based advice and counsel or brief service clinics to assist clients, unless the attorney has actual knowledge of a conflict. According to the commission's report, "Those volunteer attorneys would also not bring the conflict of the client served at the clinic back to the law firm. California's ethical rules prohibit advice on a specific set of facts even at an event such as Annual Law Day clinics, if anyone in any of the firm's offices represents the adverse party. Clearing conflicts at a drop-in clinic is so burdensome that few firms attempt it. In states that have adopted Model Rule 6.5, attorneys are able to staff clinics in poor neighborhoods and assist any client with advice and counsel or brief service as long as they have no actual knowledge of a conflict within the firm. Pro bono law firms in these states have developed a broad range of new clinical models under this Model Rule. Adoption of Model Rule 6.5 would allow far greater participation by California's law firms in providing basic counsel to thousands of low-income residents."

As this bill moves forward the author intends to work with the Access Commission, State Bar, Legal Aid Association of California, the Judicial Council and other interested stakeholders to explore specific mechanisms to promote these critical pro bono services and related financial support of nonprofit legal organizations that provide free legal services to underserved communities.

#### REGISTERED SUPPORT / OPPOSITION:

##### Support

Asian Americans for Civil Rights & Equality  
Asian Law Alliance  
American Civil Liberties Union  
Bar Association of San Francisco  
Bet Tzedek Legal Services  
California Advocates for Nursing Home Reform  
California Commission on Access to Justice  
California Commission on the Status of Women  
California Federation of Interpreters  
California Rural Legal Assistance Foundation  
California Women's Law Center

Center for Human Rights and Constitutional Law  
Central California Legal Services, Inc.  
Disability Rights Education and Defense Fund (DREDF)  
Elder Law & Advocacy  
Harriett Buhai Center for Family Law  
Inland Counties Legal Services  
Law Center for Families  
Law Foundation of Silicon Valley  
Legal Aid Association of California  
Legal Aid Foundation of Santa Barbara County  
Legal Foundation of Los Angeles  
Protection & Advocacy Inc.  
Public Advocates  
Public Interest Clearinghouse  
State Bar of California  
Western Center on Law & Poverty  
Worksafe

Opposition

None on file

Analysis Prepared by: Kevin G. Baker / JUD. / (916) 319-2334